

ADVISORY COMMITTEE'S RECOMMENDATION

**Recommendation:** The Advisory Committee recommends FAVORABLE ACTION on Warrant Article 14 by a vote of 23-0-0.

<b>Executive Summary</b>	This Article seeks to amend Brookline’s Inclusionary Zoning By-Law, Section 4.08, lowering the maximum size of private housing projects that may make cash payments to the Brookline Affordable Housing Trust Fund (AHTF) in lieu of providing affordable housing units in their developments. Currently, developers of projects with between four and nineteen dwelling units may opt to pay cash to the Town instead of including affordable housing units in their building or buildings. This Warrant Article would reduce the upper limit for this option from nineteen units to ten.
<b>Voting Yes will...</b>	Require private housing developments to meet the Town’s requirement of including 15% affordable housing units on site in their building or buildings if their developments contain more than ten units, reducing the maximum size of housing developments that may opt for payments to the Town.
<b>Voting No will...</b>	Leave the zoning bylaw unchanged.
<b>Financial impact</b>	<p>The AHTF is currently well funded and is anticipating significant additional funds from the Welltower project on Fisher Hill in the near future. In a more sustained fashion, Community Preservation Act (CPA) funds will be available to support low-income housing on an annual basis going forward, and the AHTF will be able to compete for this funding stream. So while this Article would reduce income to the AHTF, there are limited investment opportunities for these funds, and the HAB does not anticipate that this proposed change will reduce its ability to support any worthy projects.</p> <p>There are no staff or budgetary costs associated with this Article.</p>
<b>Legal implications</b>	None

**Introduction**

This Article is filed by Housing Advisory Board Chairman Roger Blood. The Housing Advisory Board oversees the development and execution of affordable housing units in Brookline, whether by private developers, non-profit developers, or the Town. Brookline Zoning Law Section 4.08 Affordable Housing Requirements includes Inclusionary Zoning that requires multi-family housing development projects of four or more residential units to include 15% of their housing units as “affordable dwelling units”. “Affordable” units are those available to households with

low or moderate incomes according to certain formulas. To date (over the past 30 years), the program has produced a total of 104 affordable units (including both on-site and off-site) across 22 separate projects.

Apartment units are considered “affordable” if rented to household members with an income set at the affordable income limit set by the Town. Rent is set at 30% of household members’ gross income on rent and tenant-paid utilities. Section 4.08 (5)(d) permits private housing developers of projects of four to nineteen dwelling units to make a cash payment to the Affordable Housing Trust in lieu of including low to moderate income units in their developments. This Article reduces from nineteen units to ten units the size of housing developments that are permitted to opt for a cash payment in lieu of including affordable units in the developments. That is, developers of between eleven- and nineteen-unit buildings would no longer have the option of paying the Town in lieu of including affordable units in their own buildings.

### **Discussion**

Private developers’ opt-out payments are set by Town guidelines on a sliding scale based on number of units and project value, starting at two percent for a four-unit project and increasing by one percent per additional unit up to seventeen percent at the nineteen-unit upper limit. The Housing Advisory Board (HAB) has set the value of payments in lieu of building units to be at a higher level than the cost of building the units. This is because most developers would rather not take on the complexity of a mixed-income project.

These payments have assisted the Town in developing new affordable housing such as the Harold and Ronald Brown Family House developed by 2Life Communities on Harvard Street, and the Colonel Floyd Apartments on Marion Street (currently under development by Brookline Housing Authority). The Town’s investment of “last in” money into these projects has allowed the projects to move forward, thereby contributing to an overall production of far more affordable units than would have been achieved if the Inclusionary Zoning (IZ) bylaw was limited to only the “on site production” option.

The current buy-out option of buildings with four to nineteen units was passed by Town Meeting in 2019. Prior to 2019, the number of affordable units required in building developments and the number of affordable units that developers could opt to buy out varied over time. A brief history of inclusionary zoning in Brookline is attached to this report and can be found here: <https://www.brooklinema.gov/DocumentCenter/View/40454>

The “cost” on a per-unit basis of the AHTF’s contribution to past projects has varied significantly over time, from a low of around \$50,000 to well over \$100,000. The upper limit was reached and exceeded for the Station Street project that came before Town Meeting twice but ultimately has not been able to proceed because the level of subsidy – over \$200,000 per unit – was deemed to be not worth the investment when compared with other opportunities.

Two reasons were cited for the proposed change:

1. CPA revenue – a one percent annual real estate surtax – is expected to generate about \$3 million annually, with a minimum 10% allocated to each purpose of affordable housing,

historic preservation and open space, and the remaining 70% allocated among the three purposes as directed by the Town.

2. The preference of including affordable units within newly developed buildings (rather than allowing developers to “buy their way out” of mixed-income solutions in favor of building luxury-only projects) has been loudly heard both within Town Meeting and beyond in recent years.

The current pipeline includes 16 projects containing a total of 268 units (total units, not affordable units). Of these, only three projects/39 units are in this 11-19 range. So moving those three projects to on-site affordable units will result in about six new on-site affordable units (15% of 40).

The recording of the April 11, 2023 Advisory Committee meeting can be viewed here (discussion of WA 14 begins at 2:00:29):

[https://brooklinema.zoomgov.com/rec/share/Z9HSs3h\\_fkLoV16bPWcLp4cpAMfVJwwXqGVNhdxCXQqvNY69ZnbjhfLrbinhp4A.J3snWNG0jhALOUj7](https://brooklinema.zoomgov.com/rec/share/Z9HSs3h_fkLoV16bPWcLp4cpAMfVJwwXqGVNhdxCXQqvNY69ZnbjhfLrbinhp4A.J3snWNG0jhALOUj7)

The recording of the March 27, 2023 Land Use Subcommittee Public Hearing can be viewed here:

<https://brooklinema.zoomgov.com/rec/share/XJzcEEW85K7UIvKAx6QGaDEaX8ON0onTJSSZcKpblCRUzS-VwGOgDKJckFqz9iZy.Hz1v1eArOLOcf2aO>

### **Recommendation**

The Advisory Committee recommends FAVORABLE ACTION on Warrant Article 14 by a vote of 23 – 0 with no abstentions.

ARTICLE 23 ADVISORY COMMITTEE VOTES

Article Description	Inclusionary zoning
<b>AC recommendation (Favorable Action unless indicated)</b>	<b>23-0-0</b>
Ben Birnbaum	Y
Harry Bohrs	
Cliff Brown	Y
Patty Correa	Y
John Doggett	Y
Katherine Florio	
Harry Friedman	Y
David-Marc Goldstein	Y
Neil Gordon	Y
Susan Granoff	Y
Kelly Hardebeck	Y
Amy Hummel	Y
Anita Johnson	Y
Alisa Jonas	
Janice Kahn	Y
Pam Lodish	
Joslin Murphy	Y
Donelle O'Neal, Sr.	Y
Linda Olson Pehlke	Y
Markus Penzel	Y
David Pollak	Y
Stephen Reeders	Y
Carlos Ridruejo	Y
Lee Selwyn	Y
Alok Somani	Y
Carolyn Thall	Y
Christine Westphal	Y
Dennis Doughty *	
* Chairperson does not vote except to break a tie	



## APPENDIX

### INCLUSIONARY ZONING IN BROOKLINE

#### Background for Adopting Warrant Article 14 Zoning Amendment

Brookline first adopted Inclusionary Zoning (I.Z.) over 30 years ago at about the same time as it established the Housing Advisory Board and the Affordable Housing Trust.

The idea of “inclusionary zoning” was an outgrowth of “exclusionary zoning” or “snob zoning”, which in affluent suburbs perpetuated large-lot single family zoning to discourage the development of smaller, denser housing that would be priced to attract new residents with lower incomes.

In Massachusetts, as with the state’s Chapter 40B (also an “anti-snob zoning” program), inclusionary zoning conditions the approval of new housing development with the requirement that a designated percentage of the new units in a project be legally designated as affordable for occupancy by income-qualified households whose rent or purchase price would be established at below-market amounts.

Brookline’s original inclusionary zoning bylaw contained a requirement that any new project with ten or more units must include at least 15 percent of total units be designated as affordable for low-moderate income occupants. Projects of nine or fewer units would have no affordable housing obligation. In most instances, the developer’s affordable housing obligation meant providing the required units onsite. The bylaw allowed exceptions, only if pre-approved by the Town, for affordable units to be provided offsite or for a negotiated cash payment to be made to the Housing Trust.

One unintended consequence of this initial inclusionary zoning bylaw was a so-called “cliff effect” whereby developers could avoid entirely the costly affordable housing obligation by proposing to build nine-unit projects.

In 2001 and 2003, the HAB recommended, and Town Meeting approved, amendments to the I.Z. bylaw that successfully eliminated this undesirable “cliff effect”. The revised bylaw replaced the steep financial “cliff” obligation at nine-vs-ten units with a gradient form of obligation. Instead of a sharp break point at ten units, the revised bylaw reduced the minimum threshold obligation from ten

to six units and at the same time established a project size range of six to fifteen units within which the developer could choose to provide the required 15 percent of units as onsite affordable or pay a prescribed sliding scale amount to the Housing Trust.

The sliding scale at six units began with a relatively low payment amount (3 percent of project value) and gradually increased to 9.75 percent of project value at 15 units, the top end of the range in which developers were afforded this option. While onsite affordable units were always the preferred option under the bylaw, over the two decades since this amendment was adopted, the HAB as trustees of the Affordable Housing Trust has used these payments to create several times as many new affordable units through non-profit affordable housing sponsors than would have been produced under the 15% onsite requirement.

In 2019 the I.Z. bylaw was further amended for two purposes: (1) to reduce further—from six to four units--the lower threshold of project unit count that would trigger the I.Z. 15 percent affordable housing obligation; and (2) to increase the upper limit of the unit count range in which the developer could opt for a cash payment in lieu of onsite affordable units—from 15 to 19 units, thereby increasing the potential cash income to the Housing Trust. By 2019, the Housing Trust had developed a record creating many more affordable units by partnering with its non-profit sponsors—including the Brookline Housing Authority—than it could via the onsite housing alternative.

At the same time, the sliding scale Housing Trust fee schedule was increased by 1/3, and currently ranges from 2 percent of project value at the new lower project size threshold of four units to 17% of project value at the 19-unit upper limit of the range.

Successful affordable housing developments made possible with local Affordable Housing Trust funding have included St. Aidans, the BHA Dummer Street project, 2-Life's Brown Family House at JFK Crossing, and Hebrew Senior Life's current project at 108 Centre Street.